



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/158274

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on July 16, 2014, at Green Bay, Wisconsin.

The issue for determination is (1) whether this ALJ has jurisdiction to address an overpayment of FS benefits previously decided by ALJ Gagnon on February 7, 2014, and (2) whether the agency's reduction of Petitioner's FS benefits to recoup the FS overpayment is correct.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Donna Agamaite
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. ALJ Nancy Gagnon determined that Petitioner was overpaid \$20,524 in FS benefits in a decision dated February 9, 2014. (Exhibit 3).
3. ALJ Nancy Gagnon determined that Petitioner was overpaid \$38,863.50 in BCP fees in her decision dated March 18, 2014. (Exhibit 2).
4. On May 19, 2014 the agency sent Petitioner a Notice of Decision stating that her FoodShare (FS) benefits would decrease from \$406 to \$326 due to an overpayment recoupment. (Exhibit 1).
5. On June 13, 2014 Petitioner requested a fair hearing. In her fair hearing request Petitioner challenged the underlined overpayment case decided by ALJ Gagnon stating that [REDACTED] was charged with fraud in this case. [REDACTED] was sentenced to 19 years in prison and is ordered to pay the full amount back to the state through his criminal case. Petitioner stated that as a single mother she cannot afford to pay Badger Care or have her FS reduced, and that she did not know about [REDACTED]'s illegal criminal activities. (Exhibit 4).
6. Petitioner's defense in the underlined overpayment cases decided by ALJ Gagnon was that she did not know about [REDACTED]'s criminal fraud activities that gave rise to the overpayments. ALJ Gagnon decided that she was a part of the household, and therefore legally responsible for the overpayments. (Exhibit 2 and Exhibit 3).

DISCUSSION

Claim preclusion (formerly known as *res judicata*) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as collateral estoppel) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

Petitioner has had her opportunity to contest the overpayments. That opportunity was at her fair hearing in front of ALJ Gagnon on January 28, 2014. She contested the overpayments from BCP and FS. After the hearing ALJ Gagnon issued two final written decisions concluding that Petitioner was overpaid \$20,524 in FS benefits and \$38,863.50 in BCP fees.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid. 7 C.F.R. §273.18(a)(2).

The agency is to recover from a FS group participating in the program by reducing their allotment. FSH §7.3.2.6. If the overpayment is due to client or agency error, then the client's monthly FS benefits are reduced by 10 percent or \$10, whichever is greater. *Id.* If the overpayment is due to an intentional program violation, then the client's monthly FS benefits are reduced by 20 percent or \$10, whichever is greater. *Id.*

In this case Petitioner challenges the reduction in her FS benefits because she does not believe that she should be responsible for the FS overpayment. Petitioner does not contest any of the figures in the FS calculations.

CONCLUSIONS OF LAW

I do not have jurisdiction to address the overpayment issue as ALJ Gagnon previously decided that issue. Thus, the agency correctly reduced Petitioner's FS benefits to recoup the overpayment.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

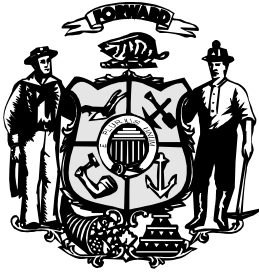
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of July, 2014

sCorinne Balter

Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 31, 2014.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability